



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/149933

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on July 16, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether the Petitioner's appeal is timely and, if so, whether the agency properly denied BC benefits to the Petitioner because he was in a restrictive re-enrollment status from October 1, 2012 – September 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was enrolled in BC from May, 2012 – October, 2012.

3. In October, 2012, the Petitioner obtained employment and was eligible for and enrolled in his employer's health insurance plan. He notified the agency of his employment and health insurance on December 28, 2012.
4. On October 2, 2012, the agency issued a Notice of Decision to the Petitioner informing him that he was required to pay a monthly premium of \$145 by October 10, 2012 for him and his wife to remain enrolled in BC. On October 2, 2012, the agency mailed a coupon for payment to the Petitioner. On October 19, 2012, another notice was mailed to the Petitioner informing him of the need to pay his premium immediately to remain enrolled.
5. On November 1, 2012, the Petitioner and his wife were placed in restrictive re-enrollment for a 12 month period due to non-payment of his premium.
6. On March 22, 2013, the Petitioner contacted the agency to apply for BC benefits. He was no longer employed.
7. On April 3, 2013, the Petitioner was informed by phone that he and his wife are not eligible for BC due to being placed in restrictive re-enrollment on October 1, 2012. On April 4, 2013, the agency issued a Notice of Decision informing the Petitioner that his application for BC was approved.
8. On June 12, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A. Timeliness of Appeal

The agency contends this appeal is untimely. I conclude that it is not untimely. The Petitioner applied for BC benefits on March 22, 2013. He was told verbally that his application was denied but the agency produced no evidence that the Petitioner was given written notice of the denial. There was no evidence that the Petitioner received written notice of appeal rights. In fact, the agency incorrectly issued a notice on April 4, 2013 that the Petitioner and his wife were approved for benefits. Based on the lack of proper notice of denial and lack of notice of appeal rights related to the denial, I conclude the Petitioner's appeal is timely.

B. Denial of BC Benefits

Unless a member of a category of exempt individuals (i.e. pregnant women under age 19, continuously eligible newborns, etc.) the following individuals must pay a premium to become or remain eligible for BadgerCare+:

1. Children in families with income over 200% of the Federal Poverty Level (FPL)
2. Parents, stepparents and caretaker relatives with income over 133% through 200% of the FPL
3. Parents, stepparents and caretaker relatives with income over 133% in a BadgerCare+ extension and
4. Self-employed parents, stepparents and caretaker relatives with income above 200% of the FPL before subtracting the depreciation but below 200% of the FPL after subtracting the depreciation.

BadgerCare+ Eligibility Handbook (BEH) §19.1

If the (adult) individual fails to pay the premium, his BadgerCare+ case will close. He will not be allowed to re-enroll in BadgerCare+ for 12 months, unless the failure to pay was for good cause. Wis. Adm. Code § DHS 103.085(3)(b)1; BEH § 19.8.1

Good cause for not paying a premium includes the following:

1. Problems with the financial institution.
2. CARES problem.
3. Local agency problem.
4. Wage withholding problem.
5. Fair hearing decision.

BEH, § 19.8.3

Restrictive Re-enrollment does not apply when, “an individual who owes a premium for quitting BC+ in the current months voluntarily quits BC+ for these reasons:

1. No person is non-financially eligible for BC+
2. The individual moved out of Wisconsin
3. Health insurance became available for the individual
4. The individual is now eligible without a premium
5. The individual has an increase in income that makes him/her BC+ ineligible.

BEH, § 19.11.4.

Petitioner contests the agency’s determination to place him and his wife in restrictive re-enrollment due to failure to pay premiums back to October 1, 2012.

The agency sent Petitioner a notice on October 2, 2012, indicating that he and his wife would not be enrolled in BC effective November 1, 2013, if he failed to pay the premiums due. Petitioner chose to apply for health insurance through his employer, rather than pay the BC premiums for October, 2012. This is good cause to voluntarily quit BC under BEH §19.11.4, above.

The agency argues that Petitioner should be placed in restrictive reenrollment because he did not notify the agency of his decision to quit BC. However, there is nothing in either BEH §7, or §27.2, that allows restrictive re-enrollment to be used as a sanction for failing to report other insurance. Therefore, the Petitioner should not have been placed in restrictive re-enrollment in October, 2012 and the agency did not properly deny benefits on this basis when he requested re-enrollment in March, 2013.

I also note that BEH §19.11.2 allows an individual in restrictive re-enrollment to become eligible again for BC during the restrictive re-enrollment period if household income falls below the point where premiums are required. Because I conclude that the Petitioner should not have been placed in restrictive re-enrollment in October, 2012, I will not specifically address the issue of whether his household income in March, 2013 would have allowed him to come out of restrictive re-enrollment.

CONCLUSIONS OF LAW

The Petitioner’s appeal is timely.

The Petitioner and his wife should not have been placed in restrictive re-enrollment in October, 2012 and the agency did not properly deny his application for BC benefits in March, 2013 based on his placement in restrictive re-enrollment.

THEREFORE, it is

ORDERED

That the agency remove Petitioner and his wife from restrictive re-enrollment. The agency shall take all administrative steps necessary to determine the Petitioner's and his wife's eligibility for BC benefits retroactive to the date of application on March 22, 2013. The agency shall issue a new Notice of Decision regarding eligibility to the Petitioner and his wife. The agency shall take all steps necessary to complete these tasks within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

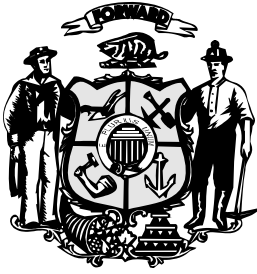
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of August, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 27, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability